

**January 2006**

**MJI Publications Updates,  
Part 2 of 3**

**Friend of the Court Domestic Violence  
Resource Book (Revised Edition)**

**Juvenile Justice Benchbook (Revised  
Edition)**

**Juvenile Traffic Benchbook (Revised  
Edition)**

**Michigan Circuit Court Benchbook**

# January 2006

## Update: Friend of the Court Domestic Violence Resource Book (Revised Edition)

### CHAPTER 1

#### Understanding Domestic Abuse

##### 1.6 Abusive Tactics

Effective January 1, 2006, 2005 PA 184 amended MCL 780.811(1)(a). The amendment expanded the list of “serious misdemeanors” to include misdemeanor violations of MCL 750.145d, using the internet or a computer to make a prohibited communication, and violations of MCL 750.233, intentionally aiming a firearm without malice. MCL 780.811(1)(a)(vii) and (viii). On page 17, add these offenses to the cross-reference, indicated with \*, addressing MCL 780.811(1)(a).

## CHAPTER 2

### Screening and Case Management

#### 2.13 Confidentiality of Records Identifying the Whereabouts of Abused Individuals

##### C. Confidentiality of Information Disclosed in Responsive Pleadings, Motions, and Court Judgments or Orders

Effective January 1, 2006, MCR 3.211(D) was amended. At the bottom of page 63, replace the second bullet with the following text:

MCR 3.211(D)(1) requires all orders for child support or spousal support be prepared and submitted on the standard Uniform Support Order form. MCR 3.211(F) requires the use of a “Judgment Information Form,” which includes sensitive personal information regarding parties and their families. The Staff Comment to the amended rule indicates that MCR 3.211(F) “allows personal information concerning a party to be provided to the friend of the court in a document separate from the court order, which is a public document.”

## **CHAPTER 8**

### **Criminal Court Proceedings Involving Domestic Violence**

#### **Part II—Criminal Procedures That May Affect Domestic Relations Proceedings**

##### **8.7 Conditional Release on Bond Prior to Trial**

###### **C. Contents of Conditional Release Orders**

Effective January 1, 2006, MCR 6.106(D)(2) was amended. Insert the following new provision “(m)” in the quoted text near the middle of page 234, and reletter the existing “(m)” and “(n)” accordingly.

“(m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order, the most restrictive provision of each order shall take precedence over the other court order until the conflict is resolved.”

###### **E. Conditional Pretrial Release Orders and Concurrent Domestic Relations Proceedings**

Effective January 1, 2006, MCR 6.106(D)(2)(m) provides that if a pretrial release order limiting or prohibiting contact with any other named person conflicts with another court order, “the most restrictive provision of each order shall take precedence over the other court order until the conflict is resolved.” On page 235, conflicting court orders are addressed. Add consideration of MCR 6.106(D)(2)(m) to the existing text.

## Update: Juvenile Justice Benchbook (Revised Edition)

### CHAPTER 4

#### Diversion and Consent Calendar Procedures

#### 4.3 Requirements of the Crime Victim's Rights Act

##### C. Offenses to Which the CVRA Applies

Effective January 1, 2006, 2005 PA 184 amended MCL 780.781(1)(f) to add four offenses to the "serious misdemeanors" to which the CVRA\* applies. Add the following offenses to the bulleted list beginning on page 74 and ending on page 75:

- contributing to the neglect or delinquency of a minor, MCL 750.145;
- using the internet or a computer to make a prohibited communication, MCL 750.145d;
- intentionally aiming a firearm without malice, MCL 750.233;
- injuring a worker in a work zone, MCL 257.601b(2).

\*2005 PA 184 also changed the title of the act to the "William Van Regenmorter Crime Victim's Rights Act." MCL 780.751.

## CHAPTER 5

### Petitions and Preliminary Hearings

#### 5.17 Requirements of the Crime Victim's Rights Act

##### A. Requirements for Charging Documents

Effective January 1, 2006, 2005 PA 184 amended MCL 780.781(1)(f)(iii) to add an offense to which the CVRA applies. On page 110, insert the following before the first bullet:

- injuring a worker in a work zone, MCL 257.601b(2);

## CHAPTER 9

### **Trials in Delinquency Cases**

#### **9.10 Limitations on Testimony Identifying a Victim's Address, Place of Employment, or Other Information**

On page 204, replace the second sentence of the first paragraph with the following text:

Effective January 1, 2006, MCR 6.201(A)(1) was amended to permit the disclosure of only the name of a witness if the witness is made available to the opposing party for interview.

## CHAPTER 10

### Juvenile Dispositions

#### 10.13 Restitution

##### **B. Claims for Restitution That Arise After Disposition or Sentencing**

Effective January 1, 2006, 2005 PA 184 amended MCL 780.766 and MCL 780.794. On page 236, replace the last paragraph of subsection (B) with the following text:

MCL 780.766(22) and MCL 780.794(22) allow a court to amend an order of restitution on the motion of a prosecuting attorney, victim, or defendant “based upon new information related to the injury, damages, or loss for which the restitution was ordered.”

##### **D. Required Restitution When Ordering an Informal Disposition in a Juvenile Delinquency Case**

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(2). On page 237, replace the final sentence of the paragraph with the following text:

“For an offense that is resolved informally by means of a consent calendar diversion or by another informal method that does not result in a dispositional hearing, by assignment to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order the restitution required under this section.” MCL 780.794(2).



## CHAPTER 10

### Juvenile Dispositions

#### 10.13 Restitution

##### E. Persons or Entities Entitled to Restitution

On page 239, insert the following information immediately before subsection (F):

**Parents of a minor victim.** MCL 780.794(24)\* states that “[i]f the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

“(a) Homemaking and child care expenses.

“(b) Income loss not ordered to be paid under [MCL 780.794(4)(h)].\*.”

“(c) Mileage.

“(d) Lodging or housing.

“(e) Meals.

“(f) Any other cost incurred in exercising the rights of the victim or a parent under this act.”

\*Effective January 1, 2006. 2005 PA 184.

\*See this month’s update to Section 10.13(I) for discussion of this statutory provision.

## CHAPTER 10

### Juvenile Dispositions

#### 10.13 Restitution

##### **H. Calculating Restitution Where the Offense Results in Property Damage, Destruction, Loss, or Seizure**

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(3) to eliminate the suggestion that a court has discretion in ordering restitution for property damage or loss.

At the bottom of page 240, in the first sentence, replace the word “may” with “shall.” MCL 780.794(3).

## CHAPTER 10

### Juvenile Dispositions

#### 10.13 Restitution

##### **I. Calculating Restitution Where the Offense Results in Physical or Psychological Injury, Serious Bodily Impairment, or Death**

###### **Expenses related to physical or psychological injury.**

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(4) to eliminate the suggestion that a court has discretion in ordering restitution for costs related to a victim's physical or psychological injury. At the bottom of page 241, in the first sentence, replace the word "may" with "shall." MCL 780.794(4).

2005 PA 184 also added a provision that requires a court to order restitution to a victim's relatives for lost income. In the middle of page 242, after subsection "(e)," insert the following:

\* \* \*

"(h) Pay an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury." MCL 780.794(4)(a)-(e), (h).

## CHAPTER 10

### Juvenile Dispositions

#### 10.13 Restitution

##### N. Restitution Ordered As a Condition of Probation

**Wage assignment by employed defendant or juvenile as a condition of probation.**

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(18). On page 247, replace the paragraph with the following text:

As a condition of probation, “the court shall order any employed juvenile to make regularly scheduled restitution payments.” If a juvenile misses two or more regularly scheduled payments, the court shall order the juvenile to execute a wage assignment to pay the restitution. MCL 780.794(18).

## CHAPTER 10

### Juvenile Dispositions

#### 10.13 Restitution

##### **P. Payment of Restitution When Juvenile Is Placed in a Juvenile Facility or Sentenced to Jail or the Department of Corrections**

Effective January 1, 2006, 2005 PA 184 added MCL 780.796b. Similar to MCL 791.220h, this new statutory provision requires a sheriff, the Department of Corrections, the Department of Human Services,\* or a County Juvenile Agency, as applicable, to deduct money from a juvenile's account to pay restitution that has been ordered.

\*Formerly the Family Independence Agency.

On page 249, change the title of this subsection as indicated above and add the following text before the first paragraph:

If a juvenile has been ordered to pay restitution and is placed in a juvenile facility, “and if the juvenile receives more than \$50.00 in a month, the department of human services [DHS] or the county juvenile agency [CJA], as applicable, shall deduct 50% of the amount over \$50.00 received by the juvenile for payment of the restitution.” MCL 780.796b(3). When the amount deducted exceeds \$100.00, or when the juvenile is released from the facility, the DHS or CJA must promptly send the money to the victim. *Id.*

If a juvenile has been ordered to pay restitution and is sentenced to jail, “and if the juvenile receives more than \$50.00 in a month, the sheriff shall deduct 50% of the amount over \$50.00 received by the juvenile for payment of the restitution.” MCL 780.796b(2). When the amount deducted exceeds \$100.00, “or when the juvenile is released to probation or discharged on the maximum sentence,” the sheriff must promptly send the money to the victim. *Id.*

The DJS, CJA, or sheriff must notify the juvenile in writing of deductions and restitution payments, and they must not alter the above statutory requirements through an agreement with the prisoner. MCL 780.796b(4).

On page 249, before the last partial paragraph, insert the following:

MCL 780.796b(1) contains substantially similar requirements. MCL 780.796b contains the additional requirement that the department notify the prisoner in writing of deductions and restitution payments.

## CHAPTER 10

### Juvenile Dispositions

#### 10.13 Restitution

##### **Q. Modification of Method of Payment of Restitution**

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(12). In the middle of page 250, replace the quotation of MCL 780.794(12) with the following:

“Subject to subsection (18), a juvenile who is required to pay restitution and who is not in willful default of the payment of the restitution may at any time petition the court to modify the method of payment. If the court determines that payment under the order will impose a manifest hardship on the juvenile or his or her immediate family, and if the court also determines that modifying the method of payment will not impose a manifest hardship on the victim, the court may modify the method of payment.”

MCL 780.794(18), discussed in the January 2006 update to Section 10.13(N), requires a court to order an “employed juvenile to make regularly scheduled restitution payments.” If the juvenile misses making two or more such payments, the court must order the juvenile to execute a wage assignment. *Id.*

## CHAPTER 10

### Juvenile Dispositions

#### 10.13 Restitution

##### R. Enforcement of Restitution Orders

**Restitution order is not dischargeable in a bankruptcy proceeding.**

On page 253, insert the following text immediately before subsection (S):

Effective January 1, 2006, 2005 PA 184 added MCL 780.794(23), which requires a court that receives notification of a defendant obligated to pay restitution having declared bankruptcy to forward a copy of the notice to the prosecuting attorney. The prosecuting attorney is then required to forward the notice to the victim at his or her last-known address.

##### U. Unclaimed Restitution

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(21). At the bottom of page 253, replace the only sentence in this subsection with:

If they are not claimed within two years after being ordered, or a person has refused to accept them, restitution payments must be deposited in the “crime victim’s rights fund” via the court’s monthly transmittal. MCL 780.794(21).\*

\*See Section 10.14, below, for further discussion.

## CHAPTER 10

### Juvenile Dispositions

#### 10.14 Crime Victim's Rights Fund Assessment

##### **B. Felony, "Serious Misdemeanor," "Specified Misdemeanor," and "Juvenile Offense" Defined**

Effective January 1, 2006, 2005 PA 184 amended MCL 780.811(1)(a) to expand the definition of "serious misdemeanor." On page 255, add the following new offenses to the bulleted list of "serious misdemeanors":

- contributing to the neglect or delinquency of a minor, MCL 750.145;
- using the internet or a computer to make a prohibited communication, MCL 750.145d;
- intentionally aiming a firearm without malice, MCL 750.233;
- injuring a worker in a work zone, MCL 257.601b.



## CHAPTER 10

### Juvenile Dispositions

#### 10.14 Crime Victim's Rights Fund Assessment

##### D. Depositing Unclaimed Restitution in the "Crime Victim's Rights Fund"

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(21). On page 258, replace the quotation of MCL 780.794(21) with the following:

"If a person or entity entitled to restitution under this section cannot be located, refuses to claim the restitution within two years after the date on which he or she could have claimed the restitution, or refuses to accept the restitution, the restitution to which that person or entity is entitled shall be deposited in the crime victim's rights fund created under section 4 of 1989 PA 196, MCL 780.904, or its successor fund. However, a person or entity entitled to that restitution may claim that restitution any time by applying to the court that originally ordered and collected it. The court shall notify the crime victim services commission of the application and the commission shall approve a reduction in the court's revenue transmittal to the crime victim's rights fund equal to the restitution owed to the person or entity. The court shall use the reduction to reimburse that restitution to the person or entity."

#### 10.15 Allocation of Fines, Costs, Restitution, Fees, Assessments, and Other Payments

Effective January 1, 2006, 2005 PA 184 amended MCL 780.766a(1) and MCL 780.794a(1) to delineate allocation of payments when an individual or juvenile is subject to payments in more than one proceeding. In the middle of page 259, before the subsection entitled "**Criminal cases**," insert the following:

MCL 780.794a(1) states in part:

"If a person is subject to fines, costs, restitution, assessments, probation or parole supervision fees, or other payments in more than 1 proceeding in a court and if a person making a payment on the fines, costs, restitution, assessments, probation or parole supervisions fees, or other payments does not indicate the

proceeding for which the payment is made, the court shall first apply the money paid to a proceeding in which there is unpaid restitution to be allocated as provided in this section.”

An identical provision is contained in MCL 780.766a(1), specifically governing allocation of payments in criminal cases.

## **CHAPTER 17**

### **Designated Case Proceedings—Arraignments, Designation Hearings, and Preliminary Examinations**

#### **17.17 Requirements to Waive a Preliminary Examination**

Effective January 1, 2006, MCR 6.110(A) was amended. In the middle of page 404, replace the first sentence of the third paragraph with the following text:

“Where a preliminary examination is permitted by law, the people and the defendant are entitled to a prompt preliminary examination.” MCR 6.110(A).

## CHAPTER 21

### “Automatic Waiver” Proceedings—Juvenile Sentencing Hearings

#### 21.8 Withdrawal of Pleas

On page 456, insert the following after the discussion of *People v Haynes (After Remand)*, 221 Mich App 551 (1997):

**Note:** Effective January 1, 2006, MCR 6.311 was deleted. MCR 6.310(C) now governs motions to withdraw pleas after sentencing.

## **CHAPTER 25**

### **Recordkeeping & Reporting Requirements**

#### **25.6 Destruction of Family Division Files and Records**

Effective January 1, 2006, MCR 3.925(E) was amended. Beginning with the second full paragraph on page 495 and ending with the first full paragraph on page 496, replace the text with the following:

MCR 3.925(E)(2)(c) states that, except for diversion and consent calendar records, “the court must destroy the files and records pertaining to a person’s juvenile offenses when the person becomes 30 years old.”

## CHAPTER 25

### Recordkeeping & Reporting Requirements

#### 25.16 Setting Aside a Juvenile Adjudication

##### D. Submission of Application to Attorney General and Prosecuting Attorney

###### “Serious misdemeanors.”

Effective January 1, 2006, 2005 PA 184 amended MCL 780.811(1)(a), expanding the list of “serious misdemeanors.” Insert the following offenses into the bulleted list on pages 513-514:

- contributing to the neglect or delinquency of a minor, MCL 750.145;
- using the internet or a computer to make a prohibited communication, MCL 750.145d;
- intentionally aiming a firearm without malice, MCL 750.233;
- *injuring a worker in a work zone, MCL 257.601b.*

## **CHAPTER 25**

### **Recordkeeping & Reporting Requirements**

#### **25.18 Recordkeeping Requirements of the Sex Offenders Registration Act**

##### **C. Post-Registration Change of Status**

Effective January 1, 2006, 2005 PA 123 amended MCL 28.725(1). On page 525, replace the first bullet with the following:

- The individual changes or vacates his or her residence, domicile, or place of work or education.

## CHAPTER 25

### Recordkeeping & Reporting Requirements

#### 25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

##### L. Registration Violation Enforcement

###### Penalties.

Effective January 1, 2006, 2005 PA 132 amended MCL 28.729(2). Replace the text of the second bullet (“Failure to Comply with Yearly or Quarterly Verification”) in the October 2004 update with the following:

An individual who fails to comply with MCL 28.725q, other than the payment of the registration fee, is guilty of a crime as follows:

- If the individual has no prior convictions for violations of SORA, a misdemeanor punishable by imprisonment for not more than 93 days, or a fine of not more than \$1,000.00, or both.
- If the individual has one prior conviction for a violation of SORA, a misdemeanor punishable by imprisonment for not more than one year, or a fine of not more than \$2,000.00, or both.
- If the individual has two or more prior convictions for violations of SORA, a felony punishable by imprisonment for not more than four years, or a fine of not more than \$2,500.00, or both.

MCL 28.729(2)(a)-(c).

- Failure to Comply with Registration Form Requirements

On page 538, delete the second paragraph under this bullet.



## CHAPTER 25

### Recordkeeping & Reporting Requirements

#### 25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

##### N. Student Safety Zones

Effective January 1, 2006, 2005 PA 121 and 127 added new provisions to the Sex Offenders Registration Act (SORA). The new provisions divide the SORA into three articles, add a new article criminalizing a registrant's residing, loitering, or working in a "student safety zone," and establish penalties for violations of the new prohibitions. On page 541, immediately before Section 25.19, insert new subsection (N) as indicated above and insert the following text:

**Prohibitions on residing, working, or loitering in a "student safety zone."**

Except as explained below, an individual required to be registered under SORA shall not reside, work, or loiter within a "student safety zone." MCL 28.734(1)(a)-(b) and MCL 28.735(1). A "student safety zone" is "the area that lies 1,000 feet or less from school property." MCL 28.733(f). MCL 28.733 also contains definitions of "loiter," "school," and "school property." See MCL 28.733(b), (d), and (e). A first violation of MCL 28.734(1) or MCL 28.735(1) is a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$1,000.00, or both. A second or subsequent violation is deemed a felony punishable by imprisonment for not more than two years or a fine of not more than \$2,000.00, or both. MCL 28.734(2) and MCL 28.735(2). An individual may be charged with, convicted of, and punished for a violation of MCL 28.734 or 28.735 and any other violation committed by the individual while violating MCL 28.734 or 28.735.

An individual who resides in a student safety zone must change his or her residence to a location outside the student safety zone within 90 days after he or she is sentenced for a conviction that requires registration. However, the individual must not initiate or maintain contact with a minor within that student safety zone during this 90-day period. MCL 28.735(4).

**Exemptions from criminal prohibitions.** The offenders described below are exempt from the criminal prohibitions on residing or working within a student safety zone. These exemptions are contained in MCL 28.734(3), MCL 28.735(3), and MCL 28.736. However, offenders required to register under SORA must not loiter in a student safety zone, and even if the offender falls under one of the exemptions listed below, he or she must not initiate or maintain contact with a minor in a student safety zone except as noted below. MCL 28.734(3) and MCL 28.735(3).

The following are exempted from the prohibitions:

- ♦ An offender who is not more than 19 years old, attends secondary or postsecondary school, and resides with his or her parent or guardian. The offender may initiate or maintain contact with a minor with whom he or she attends school in conjunction with that attendance. MCL 28.735(3)(a).
- ♦ An offender who is not more than 26 years old, attends a special education program, and resides with his or her parent or guardian or in a group home or assisted living facility. The offender may initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance. MCL 28.735(3)(b).
- ♦ An offender who was residing within a student safety zone on January 1, 2006. MCL 28.735(3)(c).
- ♦ An offender who is a patient in a hospital or hospice located in a student safety zone. MCL 28.735(3)(d).
- ♦ An offender who resides in a prison, jail, juvenile facility, or other correctional facility within a student safety zone or who is a patient in a mental health facility under a commitment order. MCL 28.735(3)(e).
- ♦ An offender who was working in a student safety zone on January 1, 2006. MCL 28.734(3)(a).
- ♦ An offender whose place of employment is within a student safety zone because a school is established or relocates there. MCL 28.734(3)(b).
- ♦ An offender who only intermittently or sporadically enters a student safety zone for purposes of work. MCL 28.734(3)(c).
- ♦ An offender “convicted” of not more than one of the following offenses:
  - An individual convicted as a juvenile of committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a) if either of the following applies:
    - the individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
    - the individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and

\*Note that these are the same offenses that make an offender eligible to petition for exemption from registration under SORA. See the October 2004 update to Section 25.18 that added a new subsection (l).

is not more than three years older than the victim. MCL 28.736(1)(a).

- An individual who is charged with committing, attempting to commit, or conspiring to commit a violation of MCL 750.520b(1)(a), MCL 750.520c(1)(a), or MCL 750.520d(1)(a) and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate MCL 750.520e or MCL 750.520g if either of the following applies:
  - the individual was under 13 years of age when he or she committed the offense and is not more than five years older than the victim; or
  - the individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than three years older than the victim. MCL 28.736(1)(b).
- An individual who has successfully completed his or her probationary period under the Holmes Youthful Trainee Act, MCL 762.11-762.15, for committing a listed offense and has been discharged from youthful trainee status. MCL 28.736(1)(c).

**Criminal probation orders.** Effective January 1, 2006, 2005 PA 126 permits a court to place on probation, except as otherwise provided by law and for a term of not less than five years, an individual convicted of a “listed offense” under SORA. MCL 771.2a(5). This applies to juveniles sentenced as adults and to juveniles who were placed on “probation” and committed to the Department of Human Services (DHS)\* or a County Juvenile Agency (CJA) following “automatic waiver” proceedings. MCL 771.2a(4).

\*Formerly the Family Independence Agency.

If an individual is placed on probation in accordance with MCL 771.2a(5), the court must order that the individual not:

- reside within a student safety zone;
- work within a student safety zone; and
- loiter within a student safety zone.

MCL 771.2a(6).

As with the criminal prohibitions in MCL 28.734 and 28.735, MCL 771.2a exempts certain probationers from its residence and work restrictions, but no probationer required to register under SORA must loiter in a student safety zone, and, in all cases, the court must order the probationer not to initiate or maintain contact with a minor in a student safety zone except as noted below. MCL 771.2a(7)-(10). If any of the following apply, the court shall not impose

a condition of probation that prohibits an individual from residing within a student safety zone:

- The individual is 19 years of age or younger, attends secondary or postsecondary school, and resides with his or her parent or guardian. The individual must be permitted to initiate or maintain contact with a minor with whom he or she attends secondary or postsecondary school in conjunction with that school attendance. MCL 771.2a(7)(a).
- The individual is 26 years of age or younger, attends a special education program, and resides with his or her parent or guardian, or resides in a group home or assisted living facility. The individual must be permitted to initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance. MCL 771.2a(7)(b).
- The individual was residing within a student safety zone on January 1, 2006. A court may allow contact with any minors named in the probation order for good cause shown and as specified in the probation order. MCL 771.2a(7)(c).
- The court must not prohibit an offender from being a patient in a hospital or hospice located in a student safety zone. MCL 771.2a(8).

If any of the following apply, the court shall not impose a condition of probation that prohibits an individual from working within a student safety zone:

- The individual was working within the student safety zone on January 1, 2006. A court may allow contact with any minors named in the probation order for good cause shown and as specified in the probation order. MCL 771.2a(9).
- An individual only intermittently or sporadically enters a student safety zone for purposes of work. A court may allow contact with any minors named in the probation order for good cause shown and as specified in the probation order. MCL 771.2a(10).

MCL 771.2a(11) permits a court to exempt an individual from probation under MCL 771.2a(5) if either of the following apply:

“(a) The individual has successfully completed his or her probationary period under [MCL 762.11 to 762.15] for committing a listed offense and has been discharged from youthful trainee status.

“(b) The individual was convicted of committing or attempting to commit a violation solely described in section 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520e, and at the

time of the violation was 17 years of age or older but less than 21 years of age and is not more than 5 years older than the victim.”

MCL 771.2a(12) contains the same definitions as MCL 28.733. Most importantly, “student safety zone” is “the area that lies 1,000 feet or less from school property.” MCL 771.2a(12)(f).

## Update: Juvenile Traffic Benchbook (Revised Edition)

### CHAPTER 3

#### Permitted Procedures for Adjudicating Criminal Traffic Offenses

##### 3.6 Requirements Under the Crime Victim's Rights Act

Effective January 1, 2006, 2005 PA 184 added one offense to the list of offenses in MCL 780.781(1)(f)(iii) to which the requirements of MCL 780.783a apply. Insert the following text before the first bullet on page 36:

- injuring a worker in a work zone, MCL 257.601b(2);

## CHAPTER 4

### Dispositions for Criminal Traffic Violations

#### 4.5 Restitution, Crime Victim's Rights Assessment, and Reimbursement of Costs of Service

##### A. Restitution

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(2) to add youthful trainee status and delayed sentences or deferred judgments of guilt to the list of outcomes requiring the court to order full restitution under MCL 780.794. Replace the quoted text at the top of page 50 with the following:

“Except as provided in subsection (8), at the dispositional hearing or sentencing for an offense, the court shall order, in addition to or in lieu of any other disposition or penalty authorized by law, that the juvenile make full restitution to any victim of the juvenile’s course of conduct that gives rise to the disposition or conviction or to the victim’s estate. For an offense that is resolved informally by means of a consent calendar diversion or by another informal method that does not result in a dispositional hearing, by assignment to youthful trainee status, by a delayed sentence or deferred judgment of guilt, or in another way that is not an acquittal or unconditional dismissal, the court shall order the restitution required under this section.”

## CHAPTER 4

### Dispositions for Criminal Traffic Violations

#### 4.5 Restitution, Crime Victim's Rights Assessment, and Reimbursement of Costs of Service

##### A. Restitution

###### **"Victim" defined.**

Insert the following text immediately before **"Calculating loss for property damage"** on page 52:

**Parents of a minor victim.** MCL 780.794(24)\* states that "[i]f the victim is a minor, the order of restitution shall require the defendant to pay to a parent of the victim an amount that is determined to be reasonable for any of the following that are actually incurred or reasonably expected to be incurred by the parent as a result of the crime:

"(a) Homemaking and child care expenses.

"(b) Income loss not ordered to be paid under [MCL 780.794(4)(h)].\*

"(c) Mileage.

"(d) Lodging or housing.

"(e) Meals.

"(f) Any other cost incurred in exercising the rights of the victim or a parent under this act."

###### **Calculating loss for property damage.**

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794(3) to mandate a court to order one or more of the remedies in the statute when a juvenile's offense results in damage, destruction, or seizure of a victim's property. Near the middle of page 52, in the first full paragraph, replace the word "may" with "shall" in the first and third sentences.

###### **Calculating expenses related to physical or psychological injury.**

Effective January 1, 2006, 2005 PA 184 also eliminated the suggestion that a court has discretion to order restitution for the expenses related to physical or psychological injury and amended the list of items for which a juvenile may be ordered to pay restitution when the juvenile's crime results in physical or psychological injury to a victim. At the bottom of page 52 and the top of page

\*Effective  
January 1,  
2006. 2005 PA  
184.

\*See this  
month's update  
to this section  
for discussion  
of this statutory  
provision.



53, replace the word “may” with “shall” in the first two sentences of that paragraph.

On page 53, add the following provision to the quoted list found in MCL 780.794(4):

\* \* \*

“(h) Pay an amount equal to income actually lost by the spouse, parent, sibling, child, or grandparent of the victim because the family member left his or her employment, temporarily or permanently, to care for the victim because of the injury.”

## **CHAPTER 4**

### **Dispositions for Criminal Traffic Violations**

#### **4.5 Restitution, Crime Victim's Rights Assessment, and Reimbursement of Costs of Service**

##### **B. Crime Victim's Rights Fund Assessment**

Effective January 1, 2006, 2005 PA 184 added one traffic offense to the list of "serious misdemeanors" listed in MCL 780.811(1)(a). Insert the following text before the first bullet on page 57:

- injuring a worker in a work zone, MCL 257.601b(2);

## CHAPTER 4

### Dispositions for Criminal Traffic Violations

#### 4.6 Allocation of Money Collected for Payment of Fines, Costs, Restitution, Assessments, or Other Payments

Effective January 1, 2006, 2005 PA 184 amended MCL 780.794a(1) to address allocation of payments in cases where a juvenile must pay fines, costs, restitution, and other payments in more than one proceeding and fails to specify the proceeding to which a payment applies. Insert the following text before Section 4.7, near the bottom of page 60:

MCL 780.794a(1) governs the allocation of money collected from a juvenile who is obligated to make payments in more than one proceeding and who, when making a payment, fails to specify the proceeding to which the payment applies. According to MCL 780.794a(1):

“If a person is subject to fines, costs, restitution, assessments, probation or parole supervision fees, or other payments in more than 1 proceeding in a court and if a person making a payment on the fines, costs, restitution, assessments, probation or parole supervision fees, or other payments does not indicate the proceeding for which the payment is made, the court shall first apply the money paid to a proceeding in which there is unpaid restitution to be allocated as provided in this section.”

## **CHAPTER 5**

### **Abstracts, Expungement of Records, & Setting Aside Adjudications**

#### **5.2 Family Division Records of Criminal Traffic Violations**

Effective January 1, 2006, the exception in MCR 3.925(E)(2)(c) to the destruction of juvenile files for adjudicated offenses described in MCL 712A.18e(2) was eliminated. On page 66, replace the third paragraph with the following text:

MCR 3.925(E)(2)(c) states that, except for diversion and consent calendar records (discussed below), “the court must destroy the files and records pertaining to a person’s juvenile offenses when the person becomes 30 years old.”

## Update: Michigan Circuit Court Benchbook

### CHAPTER 2

#### Evidence

#### Part I—General Matters (MRE Articles I, II, III, V, and XI)

#### 2.9 Limits on Evidence and Testimony

##### B. Limiting the Length of Questioning

Effective January 1, 2006, MCR 6.414 was amended. On page 35, replace the second sentence with the following text:

Trial courts have the discretion to limit voir dire, MCR 2.511(C) and MCR 6.412(C); MCR 2.507(F) and MCR 6.414(C) and (G) permit a trial court to impose reasonable time limits on opening statements and closing arguments; and trial courts apparently may exercise reasonable discretion over the length of witness interrogation.

## CHAPTER 2

### Evidence

#### Part II—Relevancy (MRE Article IV)

##### 2.14 Similar Acts Evidence

###### A. Rule

Effective January 1, 2006, 2005 PA 135 enacted MCL 768.27a. Insert the following text immediately before subsection (B) on page 51:

MCL 768.27a governs the admissibility of evidence of sexual offenses against minors. It applies only to criminal cases. MCL 768.27a(1) states in part:

“Notwithstanding [MCL 768.27], in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant.”

“Listed offenses” are contained in MCL 28.722. MCL 768.27a(2)(a).

## CHAPTER 2

### Evidence

#### Part II—Relevancy (MRE Article IV)

#### 2.14 Similar Acts Evidence

##### E. Notice Requirement

Effective January 1, 2006, 2005 PA 135 enacted MCL 768.27a. Insert the following text immediately before subsection (F) on page 54:

MCL 768.27a, which governs the admissibility of evidence of sexual offenses against minors in criminal cases, also contains a notice requirement. MCL 768.27a(1) requires the prosecuting attorney to disclose evidence admissible under that statute to the defendant “at least 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered.”

## CHAPTER 2

### Evidence

#### Part III—Witnesses, Opinions, and Expert Testimony (MRE Articles VI and VII)

#### 2.31 Self-Incrimination

##### B. Assertion of Privilege

On page 83, eliminate the October 2005 update to Section 2.31(B). On December 1, 2005, the ruling in *Davis v Straub*, 421 F3d 365 (CA 6, 2005) was vacated. *Davis v Straub*, \_\_\_ F3d \_\_\_, \_\_\_ (CA 6, 2005).



## CHAPTER 2

### Evidence

#### Part IV—Hearsay (MRE Article VIII)

#### 2.40 Hearsay Exceptions

##### I. Declarant Unavailable—MRE 804, MCL 768.26

Insert the following text after the May 2005 update to page 112:

See also *People v Bauder*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005), affirming that the use of a murder victim's non-testimonial statements did not violate defendant's Confrontation Clause rights. Concurring with *United States v Garcia-Meza*, 403 F3d 364 (CA 6, 2005), the *Bauder* Court determined that defendant's admission that he killed the victim resulted in the forfeiture of his constitutional right to confront the victim.

## **CHAPTER 3**

### **Civil Proceedings**

#### **Part II—Pretrial Motions (MCR Subchapters 2.100 and 2.200)**

#### **3.15 Motions**

##### **F. Decision**

Effective January 1, 2006, MCR 8.107 was amended. On page 156, replace the final paragraph with the following text:

A decision should be rendered no later than 35 days after submission. MCR 8.107(A). Matters not decided within 56 days of submission must be identified on the quarterly “Report as to Matters Undecided.” MCR 8.107(B).

## CHAPTER 3

### Civil Proceedings

#### Part IV—Resolution Without Trial (MCR Subchapter 2.400)

#### 3.32 Offer of Judgment

##### C. Amount

On the top of page 198, after the first sentence, insert the following text:

While the value of property may be variable, MCR 2.405(A)(1) is applicable to issues involving property if the offer is for a “sum certain.” *Knue v Smith*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005).

##### D. Timing

On page 198, replace the first sentence of the paragraph with:

An offer of judgment can be made no less than 28 days before trial. MCR 2.405(B). *Knue v Smith*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005).

## CHAPTER 3

### Civil Proceedings

#### Part V—Trial (MCR Subchapter 2.500)

#### 3.38 Jury Selection

##### E. Voir Dire

Effective January 1, 2006, MCR 2.511 was amended. On page 213, replace the second paragraph with the following text:

MCR 2.511(G) provides:

“Replacement of Challenged Jurors. After the jurors have been seated in the jurors’ box and a challenge for cause is sustained or a peremptory challenge or challenges exercised, another juror or other jurors must be selected and examined. Such jurors are subject to challenge as are previously seated jurors.”

MCR 2.511(F) prohibits discrimination in the jury selection process. That rule states:

“(1) No person shall be subjected to discrimination during voir dire on the basis of race, color, religion, national origin, or sex.

“(2) Discrimination during voir dire on the basis of race, color, religion, national origin, or sex for the purpose of achieving what the court believes to be a balanced, proportionate, or representative jury in terms of these characteristics shall not constitute an excuse or justification for a violation of this subsection.”

## CHAPTER 3

### Civil Proceedings

#### Part V—Trial (MCR Subchapter 2.500)

#### 3.38 Jury Selection

##### F. Challenge for Cause

On page 214, before the first full paragraph, insert the following text:

**Note:** Subsequent to the ruling in *Froede v Holland Ladder Co*, 207 Mich App 127 (1994), 2002 PA 739 amended MCL 600.1307a to require that a person “[n]ot have been convicted of a felony” to qualify as a juror. Effective January 1, 2006, MCR 2.511(D) was amended to eliminate having been convicted of a felony as a basis to challenge for cause the seating of a prospective juror.

## CHAPTER 3

### Civil Proceedings

#### Part V—Trial (MCR Subchapter 2.500)

##### 3.39 Voir Dire

###### A. Generally

Effective January 1, 2006, MCR 2.511 was amended. On page 217, replace the fourth paragraph with the following text:

MCR 2.511(G) provides:

“Replacement of Challenged Jurors. After the jurors have been seated in the jurors’ box and a challenge for cause is sustained or a peremptory challenge or challenges exercised, another juror or other jurors must be selected and examined. Such jurors are subject to challenge as are previously seated jurors.”

MCR 2.511(F) prohibits discrimination in the jury selection process. That rule states:

“(1) No person shall be subjected to discrimination during voir dire on the basis of race, color, religion, national origin, or sex.

“(2) Discrimination during voir dire on the basis of race, color, religion, national origin, or sex for the purpose of achieving what the court believes to be a balanced, proportionate, or representative jury in terms of these characteristics shall not constitute an excuse or justification for a violation of this subsection.”

## CHAPTER 4

### Criminal Proceedings

#### Part I—Preliminary Proceedings (MCR Subchapters 6.000 and 6.100)

#### 4.3 Pretrial Release

##### D. Conditional Release

MCR 6.106(D)(2) was amended, effective January 1, 2006. Add the following new sub-subsection (m) to the quoted rule at the top of page 274 and reletter the remaining paragraphs accordingly:

“(m) comply with any condition limiting or prohibiting contact with any other named person or persons. If an order under this paragraph limiting or prohibiting contact with any other named person or persons is in conflict with another court order, the most restrictive provision of each order shall take precedence over the other court order until the conflict is resolved.” MCR 6.106(D)(2)(m).

##### E. Money Bail

The money bail and bond requirements in MCR 6.106(E) were amended, effective January 1, 2006. On page 274, replace the second sentence in the first paragraph with the following text:

MCR 6.106(E)(1)(a) states:

“(1) The court may require the defendant to

“(a) post, at the defendant’s option,

“(i) a surety bond that is executed by a surety approved by the court in an amount equal to 1/4 of the full bail amount, or

“(ii) bail that is executed by the defendant, or by another who is not a surety approved by the court, and secured by

“[A] a cash deposit, or its equivalent, for the full bail amount, or

“[B] a cash deposit of 10 percent of the full bail amount, or, with the court’s consent,

“[C] designated real property[.]”

Replace the second sentence in the second paragraph on page 274 with the following text:

\*MCR  
6.106(E)(1)(b),  
as amended,  
effective  
January 1,  
2006.

Under this subrule, the defendant cannot post a surety bond in an amount equal to 1/4 of the full bail amount (must be equal to the full bail amount), nor can the defendant post a cash deposit of 10% of the bond amount (must be a cash deposit, or its equivalent, equal to the full bail amount).\*



## **CHAPTER 4**

### **Criminal Proceedings**

#### **Part I—Preliminary Proceedings (MCR Subchapters 6.000 and 6.100)**

#### **4.3 Pretrial Release**

##### **H. Custody Hearing**

MCR 6.106(G)(1) was amended, effective January 1, 2006, to permit the prosecutor to request a custody hearing. On page 276, replace the third sentence in the paragraph with the following language:

The court may conduct a custody hearing if the defendant is being held in custody pursuant to MCR 6.106(B) and either the defendant or the prosecutor requests a custody hearing.

## **CHAPTER 4**

### **Criminal Proceedings**

#### **Part I—Preliminary Proceedings (MCR Subchapters 6.000 and 6.100)**

##### **4.5 Attorneys—Waiver of Counsel**

###### **C. Advice at Subsequent Proceedings**

MCR 6.005 was amended, effective January 1, 2006. Add the following language to the last paragraph on page 284:

If the prosecution would be significantly prejudiced by an adjournment and a defendant has not been reasonably diligent in seeking counsel, the court may refuse to grant an adjournment to appoint counsel or to permit the defendant to retain counsel. MCR 6.005(E).

## CHAPTER 4

### Criminal Proceedings

#### Part I—Preliminary Proceedings (MCR Subchapters 6.000 and 6.100)

#### 4.7 Preliminary Examination—Motion to Quash

##### B. Initial Bind Over by District Court

At the top of page 289, replace the first sentence in the first paragraph with the following language:

Where the law permits a preliminary examination, it must be held within 14 days of arraignment unless adjourned for good cause. MCL 766.4; MCL 766.7; MCR 6.104(E)(4); MCR 6.110(A), (B).<sup>\*</sup> If the parties consent to the adjournment, the court may adjourn the preliminary examination for a reasonable time, for good cause shown. MCR 6.110(B), as amended. If a party objects to an adjournment, the court must make a finding on the record of good cause shown before the court may adjourn the preliminary examination. MCR 6.110(B), as amended. Any violation of the requirements in subrule (B) is harmless error unless the defendant shows actual prejudice as a result of the violation. MCR 6.110(B), as amended.

In the third paragraph on page 289, eliminate the asterisk after the first sentence and its corresponding side note.

<sup>\*</sup>MCR 6.110(A), as amended, effective January 1, 2006.

## CHAPTER 4

### Criminal Proceedings

#### Part I—Preliminary Proceedings (MCR Subchapters 6.000 and 6.100)

#### 4.8 Information

##### C. Joinder of Counts

##### 1. Single Defendant

Effective January 1, 2006, MCR 6.120 was amended and significantly reorganized. On page 292, beginning with the second paragraph, replace the text in this sub-subsection with the following text:

Except where a defendant is entitled to the severance of unrelated charges, the court—on its own initiative, a party’s motion, or the stipulation of all parties—may join against a single defendant offenses charged in more than one information or indictment. MCR 6.120(B).

Similarly, except where a defendant is entitled to severance, the court—on its own initiative, a party’s motion, or the stipulation of all parties—may sever offenses charged in a single information or indictment against a single defendant. MCR 6.120(B).

A court may join or sever charges under MCR 6.120(B) “when appropriate to promote fairness to the parties and a fair determination of the defendant’s guilt or innocence of each offense.” MCR 6.120(B). MCR 6.120(B) further states:

“(1) Joinder is appropriate if the offenses are related. For purposes of this rule, offenses are related if they are based on

“(a) the same conduct or transaction, or

“(b) a series of connected acts, or

“(c) a series of acts constituting parts of a single scheme or plan.

“(2) Other relevant factors include the timeliness of the motion, the drain on the parties’ resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties’ readiness for trial.

“(3) If the court acts on its own initiative, it must provide the parties an opportunity to be heard.

On a defendant’s motion, unrelated charges against that defendant must be severed for separate trials. MCR 6.120(C).

## CHAPTER 4

### Criminal Proceedings

#### Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

#### 4.9 Motions

##### F. Disposition

Effective January 1, 2006, MCR 8.107 was amended. On page 295, replace the third paragraph with the following text:

Judges and judicial officers should promptly determine matters submitted to them. Specifically, MCR 8.107(A) states:

“Matters under submission to a judge or judicial officer should be promptly determined. Short deadlines should be set for presentation of briefs and affidavits and for production of transcripts. Decisions, when possible, should be made from the bench or within a few days of submission; otherwise a decision should be rendered no later than 35 days after submission. For the purpose of this rule, the time of submission is the time the last argument or presentation in the matter was made, or the expiration of the time allowed for filing the last brief or production of transcripts, as the case may be.” MCR 8.107(A).

Matters not decided within 56 days of submission must be identified on the quarterly “Report as to Matters Undecided.” MCR 8.107(B).

## CHAPTER 4

### Criminal Proceedings

#### Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

#### 4.18 Separate or Joint Trial

##### A. One Defendant—Multiple Charges

Effective January 1, 2006, MCR 6.120 was amended and significantly reorganized. Beginning near the bottom of page 323 and continuing to page 324, replace the entire text in this subsection with the following text:

A defendant may be charged with two or more offenses in a single information or indictment filed by the prosecuting attorney. MCR 6.120(A). However, each offense with which a defendant is charged must be stated in a separate count. *Id.* When two or more informations or indictments are filed against a single defendant, they may be consolidated for a single trial. *Id.*

Except where a defendant is entitled to the severance of unrelated charges, the court—on its own initiative, a party’s motion, or the stipulation of all parties—may join against a single defendant offenses charged in more than one information or indictment. MCR 6.120(B).

Similarly, except where a defendant is entitled to severance, the court—on its own initiative, a party’s motion, or the stipulation of all parties—may sever offenses charged in a single information or indictment against a single defendant. MCR 6.120(B).

A court may join or sever charges under MCR 6.120(B) “when appropriate to promote fairness to the parties and a fair determination of the defendant’s guilt or innocence of each offense.” MCR 6.120(B). MCR 6.120(B) further states:

“(1) Joinder is appropriate if the offenses are related. For purposes of this rule, offenses are related if they are based on

“(a) the same conduct or transaction, or

“(b) a series of connected acts, or

“(c) a series of acts constituting parts of a single scheme or plan.

“(2) Other relevant factors include the timeliness of the motion, the drain on the parties’ resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties’ readiness for trial.

“(3) If the court acts on its own initiative, it must provide the parties an opportunity to be heard.

On a defendant’s motion, unrelated charges against that defendant must be severed for separate trials. MCR 6.120(C).



## CHAPTER 4

### Criminal Proceedings

#### Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

##### 4.19 Speedy Trial

###### A. Right to a Speedy Trial

After the second sentence in the first paragraph on page 326, insert the following text:

“Whenever the defendant’s constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice.” MCR 6.004(A).\*

\*As amended,  
effective  
January 1,  
2006.

## CHAPTER 4

### Criminal Proceedings

#### Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

#### 4.19 Speedy Trial

##### B. Recognizance Release

Replace the quoted text following the first paragraph on page 328 with the following:

\*As amended,  
effective  
January 1,  
2006.

“In a felony case in which the defendant has been incarcerated for a period of 180 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, or in a misdemeanor case in which the defendant has been incarcerated for a period of 28 days or more to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode, the defendant must be released on personal recognizance, unless the court finds by clear and convincing evidence that the defendant is likely either to fail to appear for future proceedings or to present a danger to any other person or the community.” MCR 6.004(C).\*

In the introductory sentence after the above paragraph and before the remaining text on page 328, replace “6-month period” with “180-day period.”

##### C. Untried Charges Against State Prisoners—180-Day Rule

MCR 6.004(D) was amended, effective January 1, 2006. Replace the quoted statutory text of MCR 6.004(D)(1)(a)–(b) on page 329 with the following text:

“the inmate shall be brought to trial within 180 days after the department of corrections causes to be delivered to the prosecuting attorney of the county in which the warrant, indictment, information, or complaint is pending written notice of the place of imprisonment of the inmate and a request for final disposition of the warrant, indictment, information, or complaint. The request shall be accompanied by a statement setting forth the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time or disciplinary credits earned, the time of

parole eligibility of the prisoner, and any decisions of the parole board relating to the prisoner. The written notice and statement shall be delivered by certified mail.” MCR 6.004(D)(1).

Replace the quoted text of MCR 6.004(D)(2), which begins just below the middle of page 329, with the following text:

“(2) Remedy. In the event that action is not commenced on the matter for which request for disposition was made as required in subsection (1), no court of this state shall any longer have jurisdiction thereof, nor shall the untried warrant, indictment, information, or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.” MCR 6.004(D)(2).

Add the following **Note** before the last paragraph at the bottom of page 329:

**Note:** The following cases were decided prior to the January 1, 2006, amendment of MCR 6.004(D). Thus, their continued viability must be evaluated in light of the 2006 amendment. In particular, trial courts should evaluate the continued viability of *People v Roscoe*, 162 Mich App 710 (1986), *People v Hill*, 402 Mich 272 (1978), and *People v Hendershot*, 357 Mich 300 (1959), and its progeny.

## CHAPTER 4

### Criminal Proceedings

#### Part II—Pretrial Motions and Proceedings (MCR Subchapters 6.000 and 6.100)

##### 4.19 Speedy Trial

###### D. Detainers

Insert the following text after the second paragraph on page 331:

However, the 120-day time limit may be tolled when the delay was caused by defense counsel's motion to withdraw from representing a defendant due to a conflict of interest. *People v Stone*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005). In *Stone*, the trial court properly excluded the 13-day period from the IAD's time limit calculations because defense counsel's withdrawal on the basis of a conflict of interest is an act "typically [done] for the benefit of the defendant." *Stone, supra* at \_\_\_. Where a delay results from action taken to accommodate the defendant's interests, the period of delay is properly excluded from the IAD's 120-day limit. *Stone, supra* at \_\_\_.

## **CHAPTER 4**

### **Criminal Proceedings**

#### **Part III—Discovery and Required Notices (MCR Subchapter 6.200)**

##### **4.26 Discovery**

###### **A. Generally**

Effective January 1, 2006, MCR 6.201 was amended. In the fourth paragraph on page 361, delete the asterisk and its corresponding side note.

The Michigan Supreme Court did not adopt the proposed amendments to MCR 6.610 concerning discovery in criminal matters over which the district court has jurisdiction. On page 362, delete the last sentence in the paragraph before subsection (B), the asterisk, and its corresponding side note.

## CHAPTER 4

### Criminal Proceedings

#### Part III—Discovery and Required Notices (MCR Subchapter 6.200)

##### 4.26 Discovery

###### D. Violation of Discovery Order

Before the first paragraph at the top of page 365, insert the following text:

MCR 6.201(B)(1)–(5) requires the prosecutor, at the defendant’s request, to provide the defendant with specific information possessed by the prosecution. The subrule applicable to discovery violations provides:

“(J) Violation. If a party fails to comply with this rule, the court, in its discretion, may order the party to provide the discovery or permit the inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances. Parties are encouraged to bring questions of noncompliance before the court at the earliest opportunity. Wilful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court. An order of the court under this section is reviewable only for abuse of discretion.” MCR 6.201(J).\*

\*As amended,  
effective  
January 1,  
2006.

## CHAPTER 4

### Criminal Proceedings

#### Part III—Discovery and Required Notices (MCR Subchapter 6.200)

#### 4.30 Witnesses—Disclosure and Production

##### B. Witness List

Insert the following language after the second sentence in the paragraph on page 381:

The applicable court rule permits a party to amend its witness list without leave of the court up to 28 days before trial. MCR 6.201(A)(1).\*

\*As amended,  
effective  
January 1,  
2006.

Insert the following text after the paragraph on page 381:

MCR 6.201(A)(1) requires a party to provide all other parties with the names and addresses of all witnesses the party may call at trial. “[I]n the alternative, a party may provide the name of the witness and make the witness available to the other party for interview[.]” *Id.*\*

\*As amended,  
effective  
January 1,  
2006.

## CHAPTER 4

### Criminal Proceedings

#### Part III—Discovery and Required Notices (MCR Subchapter 6.200)

#### 4.30 Witnesses—Disclosure and Production

##### F. Unavailable Witnesses

Insert the following text after the first paragraph on page 383:

Under the equitable doctrine of forfeiture, a defendant forfeits his or her constitutional claims regarding the admissibility of statements made by an unavailable witness when the witness' unavailability resulted from the defendant's wrongdoing. *People v Bauder*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005).

**Note:** For detailed information on testimonial evidence, a defendant's right to confrontation, and hearsay exceptions applicable to unavailable witnesses, see Section 2.40(I) on page 112 and the corresponding updates to page 112.



## CHAPTER 4

### Criminal Proceedings

#### Part IV—Pleas (MCR Subchapter 6.300)

##### 4.31 Felony Plea Proceedings

###### B. Plea Requirements

###### 1. An Understanding Plea

Effective January 1, 2006, MCR 6.302 was further amended, and the provisions in MCR 6.302(B) were reorganized. Replace the August 2005 update to page 385 with the following:

The court may, orally or in writing, advise one or more defendants at the same time of the guilty plea rights in MCR 6.302(B)(3) and (B)(5). MCR 6.302(B). The court may not use a writing to advise a defendant of the guilty plea rights found in MCR 6.302(B)(1), (B)(2), or (B)(4). MCR 6.302(B). If a writing is used to advise a defendant of the rights listed in MCR 6.302(B)(3) and (B)(5), the information must appear on a form approved by the State Court Administrative Office. MCR 6.302(B). If a writing is used to advise the defendant of the rights listed in MCR 6.302(B)(3) and (B)(5), “the court shall address the defendant and obtain from the defendant orally on the record a statement that the rights were read and understood and a waiver of those rights. The waiver may be obtained without repeating the individual rights.” MCR 6.302(B).

## **CHAPTER 4**

### **Criminal Proceedings**

#### **Part IV—Pleas (MCR Subchapter 6.300)**

##### **4.31 Felony Plea Proceedings**

###### **D. Remedy for a Defective Plea**

Effective January 1, 2006, MCR 6.311 was deleted and its provisions were incorporated into MCR 6.310. In the second sentence of the first paragraph on page 386, delete the citation to MCR 6.311.

## CHAPTER 4

### Criminal Proceedings

#### Part IV—Pleas (MCR Subchapter 6.300)

##### 4.33 Plea of Not Guilty by Reason of Insanity—MCR 6.304

Effective January 1, 2006, MCR 6.304(C)(2) was amended. Near the top of page 390, replace the text in (2) with the following language:

(2) that, by a preponderance of the evidence, the defendant was legally insane at the time of the offense.

##### 4.34 Plea of Guilty but Mentally Ill—MCR 6.303

Replace the second sentence in the first paragraph on page 390 with the following text:

“In addition to establishing a factual basis for the plea pursuant to MCR 6.302(D)(1) or (D)(2)(b), the court must examine the psychiatric reports prepared and hold a hearing that establishes support for a finding that the defendant was mentally ill at the time of the offense to which the plea is entered.” MCR 6.303.\*

\*As amended,  
effective  
January 1,  
2006.

##### 4.35 Withdrawal of a Guilty Plea

Effective January 1, 2006, MCR 6.311 was eliminated and its provisions were incorporated into MCR 6.310(C) and (D). On page 391, before subsection (A), delete the reference to MCR 6.311.

###### A. Withdrawal of Plea Before Sentencing

Replace all but the first paragraph on page 391 with the following:

A defendant has the right to withdraw a guilty plea before the court accepts the plea on the record. MCR 6.310(A).

MCR 6.310(B) sets forth the requirements for withdrawing a plea after the court accepts it but before the court imposes sentence.\* MCR 6.310(B) states:

“After acceptance but before sentence,

\*As amended,  
effective  
January 1,  
2006.

“(1) a plea may be withdrawn on the defendant’s motion or with the defendant’s consent only in the interest of justice, and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant’s motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by [MCR 6.310](C).

“(2) the defendant is entitled to withdraw the plea if

“(a) the plea involves a prosecutorial sentence recommendation or agreement for a specific sentence, and the court states that it is unable to follow the agreement or recommendation; the trial court shall then state the sentence it intends to impose, and provide the defendant the opportunity to affirm or withdraw the plea; or

“(b) the plea involves a statement by the court that it will sentence to a specified term or within a specified range, and the court states that it is unable to sentence as stated; the trial court shall provide the defendant the opportunity to affirm or withdraw the plea, but shall not state the sentence it intends to impose.” MCR 6.310(B)(1)–(2), as amended.

## CHAPTER 4

### Criminal Proceedings

#### Part IV—Pleas (MCR Subchapter 6.300)

##### 4.35 Withdrawal of a Guilty Plea

###### C. Withdrawal of Plea After Sentencing

Effective January 1, 2006, MCR 6.311 was deleted and its provisions were incorporated into MCR 6.310. On page 393, delete the asterisk and corresponding side note regarding these amendments and replace the first three paragraphs with the following text:

MCR 6.310(C) sets forth the requirements for withdrawing a plea after sentence is imposed:

“The defendant may file a motion to withdraw the plea within 6 months after sentence. Thereafter, the defendant may seek relief only in accordance with the procedure set forth in subchapter 6.500. If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advice or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advice given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.”

The issue preservation requirements formerly found in MCR 6.311(C) are now located in MCR 6.310(D). On page 393, in the introduction to the quoted text of subrule MCR 6.311(C), change the reference from MCR 6.311(C) to MCR 6.310(D).

## CHAPTER 4

### Criminal Proceedings

#### Part IV—Pleas (MCR Subchapter 6.300)

##### 4.35 Withdrawal of a Guilty Plea

###### G. Appealing a Guilty Plea

Add the following text to the August 2005 update to pages 394–395:

Effective January 1, 2006, MCR 6.425(F)(2)(b) and (G)(1)(c) were further amended “to more accurately reflect the holding of the United States Supreme Court in *Halbert v Michigan*[.]”

## CHAPTER 4

### Criminal Proceedings

#### Part IV—Pleas (MCR Subchapter 6.300)

#### 4.36 Sentence Bargaining

##### B. Violations of a Sentence Agreement or Recommendation

##### 2. By Defendant

Effective January 1, 2006, MCR 6.310(C) was relettered (E) and amended. As amended, the subrule permits a prosecutor to move that a defendant's plea be vacated before *or after* sentence has been imposed if the defendant has failed to comply with the terms of a plea agreement.

Replace the first paragraph on page 397 with the following text:

MCR 6.310(E) states that “[o]n the prosecutor’s motion, the court may vacate a plea if the defendant has failed to comply with the terms of a plea agreement.”

## **CHAPTER 4**

### **Criminal Proceedings**

#### **Part IV—Pleas (MCR Subchapter 6.300)**

##### **4.36 Sentence Bargaining**

###### **C. Enforcing a Sentence Agreement**

Insert the following text after the first paragraph on page 399:

A defendant is entitled to withdraw his or her plea when the court is unable to comply with the prosecutor's sentence recommendation or agreement, or the court is unable to sentence a defendant in accord with the court's initial statement regarding the sentence it would impose. MCR 6.310(B)(2)(a)–(b).\*

\*As amended,  
effective  
January 1,  
2006.



## CHAPTER 4

### Criminal Proceedings

#### Part IV—Pleas (MCR Subchapter 6.300)

#### 4.37 Plea—Collateral Attack of Earlier Plea or Conviction

##### C. Uncontested Prior Convictions

Insert the following text after the first paragraph on page 401:

MCR 6.610(F)(2) incorporates the standard espoused by the *Garvie* and *Schneider* Courts in the above paragraph. MCR 6.610(F)(2) states:\*

“Unless a defendant who is entitled to appointed counsel is represented by an attorney or has waived the right to any attorney, a subsequent charge or sentence may not be enhanced because of this [prior] conviction and the defendant may not be incarcerated for violating probation or any other condition imposed in connection with this [prior] conviction.”

\*Effective  
January 1,  
2006.

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

#### 4.38 Jury Trial

##### C. Voir Dire

On page 405, replace the second sentence of the second full paragraph with the following information:

MCR 2.511(G) states as follows regarding replacement of jurors removed during voir dire:

“(G) Replacement of Challenged Jurors. After the jurors have been seated in the jurors’ box and a challenge for cause is sustained or a peremptory challenge or challenges exercised, another juror or other jurors must be selected and examined. Such jurors are subject to challenge as are previously seated jurors.”\*

\*Effective  
January 1,  
2006.

MCR 2.511(F) prohibits discrimination in the jury selection process.\*  
According to MCR 2.511(F):

\*Effective  
January 1,  
2006.

“(1) No person shall be subjected to discrimination during voir dire on the basis of race, color, religion, national origin, or sex.

“(2) Discrimination during voir dire on the basis of race, color, religion, national origin, or sex for the purpose of achieving what the court believes to be a balanced, proportionate, or representative jury in terms of these characteristics shall not constitute an excuse or justification for a violation of this subsection.”

## **CHAPTER 4**

### **Criminal Proceedings**

#### **Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)**

##### **4.38 Jury Trial**

###### **C. Voir Dire**

###### **1. Challenges for Cause**

Effective January 1, 2006, MCR 2.511(D)(2) was deleted. Delete the reference to that rule in the second full paragraph on page 406.

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

##### 4.38 Jury Trial

###### H. View

Effective January 1, 2006, MCR 6.414 was amended and some of its provisions were reordered. On page 408, immediately following subsection (H), change the reference from MCR 6.414(D) to MCR 6.414(F). In the text following subsection (H), replace the second and third sentences at the bottom of page 408 and the first and second sentences at the top of page 409 with the following text:

MCR 6.414(F) sets forth the method by which the trial court may properly order a jury view:

“(F) View. The court may order a jury view of property or of a place where a material event occurred. The parties are entitled to be present at the jury view. During the view, no persons other than, as permitted by the trial judge, the officer in charge of the jurors, or any person appointed by the court to direct the jurors’ attention to a particular place or site, and the trial judge, may speak to the jury concerning a subject connected with the trial; any such communication must be recorded in some fashion.”

##### 4.39 Jury Waiver

###### A. Requirements

Effective January 1, 2006, MCR 6.402(A) was amended to conform with MCR 6.113(E), a new subrule that provides a process by which circuit courts may eliminate arraignments. Near the bottom of page 409, replace the second sentence with the following language:

Before accepting a defendant’s waiver, the defendant must have been arraigned on the information (or have waived arraignment), properly advised of the right to a jury trial, and offered the opportunity to consult with an attorney. MCR 6.402(A). In a court where arraignments have been eliminated under MCR 6.113(E), the court may not accept a defendant’s waiver of trial

by jury until the defendant has been provided with a copy of the information and offered an opportunity to consult with an attorney. MCR 6.402(A).

**Note:** Effective January 1, 2006, MCR 6.113(E) authorizes a circuit court to eliminate arraignments under specific circumstances. MCR 6.113(E) states: “A circuit court may submit to the State Court Administrator pursuant to MCR 8.112(B) a local administrative order that eliminates arraignment for a defendant represented by an attorney, provided other arrangements are made to give the defendant a copy of the information.”

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

##### 4.41 Confrontation

###### A. Defendant's Right of Confrontation

###### 4. Unavailable Witnesses

Insert the following text after the July 2005 update to page 415:

See also *People v Bauder*, \_\_\_ Mich App \_\_\_, \_\_\_ (2005) (where the Court of Appeals held that the victim's statements to friends, co-workers, and the defendant's relatives in the weeks before her death were not testimonial statements and their admission did not violate the defendant's right of confrontation).

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

##### 4.41 Confrontation

###### B. Special Arrangements to Accommodate Compelling Interests

Effective January 1, 2006, the Michigan Supreme Court adopted a new court rule, MCR 6.006, that addresses the use of video and audio technology in specific court proceedings. Replace the first full paragraph near the top of page 416 with the following text:

MCR 6.006 governs the use of video and audio technology in the conduct of specific court proceedings. In its entirety, MCR 6.006 states:

“(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, arraignments on the information, pretrial conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.

“(B) Defendant in the Courtroom—Preliminary Examinations. As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, district courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.

“(C) Defendant in the Courtroom—Other Proceedings. As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, district and circuit courts may use two-way interactive video technology to take testimony from a person at another location in the following proceedings:

“(1) evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and

proceedings to revoke a sentence that does not entail an adjudication of guilt, such as youthful trainee status;

“(2) with the consent of the parties, trials. A party who does not consent to the use of two-way interactive video technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

“(D) Mechanics of Use. The use of telephonic, voice, video conferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by the State Court Administrative Office, and all proceedings at which such technology is used must be recorded verbatim by the court.”



## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

#### 4.45 Stipulations, Statements, and Arguments

##### B. Opening Statement

Effective January 1, 2006, MCR 6.414 was amended and some of its provisions were relettered. At the very bottom of page 421, change the court rule cited from MCR 6.414(B) to MCR 6.414(C). At the top of page 422, replace the quoted text with the following text:

“(C) Opening Statements. Unless the parties and the court agree otherwise, the prosecutor, before presenting evidence, must make a full and fair statement of the prosecutor’s case and the facts the prosecutor intends to prove. Immediately thereafter, or immediately before presenting evidence, the defendant may make a like statement. The court may impose reasonable time limits on the opening statements.” MCR 6.414(C).

##### C. Closing Argument

At the top of page 423, replace the text appearing before sub-subsection (1) with the following text:

MCR 6.414(G) provides:\*

“(G) Closing Arguments. After the close of all the evidence, the parties may make closing arguments. The prosecutor is entitled to make the first closing argument. If the defendant makes an argument, the prosecutor may offer a rebuttal limited to the issues raised in the defendant’s argument. The court may impose reasonable time limits on the closing arguments.”

\*As amended,  
effective  
January 1,  
2006.

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

##### 4.47 Directed Verdict

###### C. Motion for Involuntary Dismissal in Bench Trial

Effective January 1, 2006, MCR 6.419 was amended and a provision addressing bench trials was adopted. Delete the last two lines at the bottom of page 430, and at the top of page 431, replace the quoted text with the following language:

“(C) Bench Trial. In an action tried without a jury, after the prosecutor has rested the prosecution’s case-in-chief, the defendant, without waiving the right to offer evidence if the motion is not granted, may move for acquittal on the ground that a reasonable doubt exists. The court may then determine the facts and render a verdict of acquittal, or may decline to render judgment until the close of all the evidence. If the court renders a verdict of acquittal, the court shall make findings of fact.” MCR 6.419(C).

##### 4.48 Jury Instructions

###### A. Generally

Effective January 1, 2006, MCR 6.414 was amended to include a provision that requires a trial court, before beginning a trial, to deliver to the jury appropriate pretrial instructions. Before the first paragraph near the bottom of page 431, insert the following text:

MCR 6.414(A) requires a trial court to deliver pretrial instructions to the jury. Specifically, the rule states: “Before trial begins, the court should give the jury appropriate pretrial instructions.”

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

#### 4.48 Jury Instructions

##### B. Content of Instructions

On page 432, change all references in the first paragraph from MCR 6.414(F) to MCR 6.414(H) and replace the last sentence in the first paragraph with the following text:

The court must instruct the jury after the parties have completed (or waived) closing arguments. MCR 6.414(H). “[A]t the discretion of the court, and on notice to the parties, the court may instruct the jury before the parties make closing arguments, and give any appropriate further instructions after argument.” MCR 6.414(H).\*

\*As amended,  
effective  
January 1,  
2006.

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

##### 4.49 Jury Deliberation

###### A. Materials in Jury Room

Insert the following text after the paragraph on page 435:

The court has discretion in determining whether to permit jurors to take with them into the jury room any notes taken during trial. MCR 6.414(D) provides in part:\*

“The court may, but need not, allow jurors to take their notes into deliberations. If the court decides not to permit the jurors to take their notes into deliberations, the court must so inform the jurors at the same time it permits the note taking. The court shall ensure that all juror notes are collected and destroyed when the trial is concluded.”

\*As amended,  
effective  
January 1,  
2006.

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

#### 4.49 Jury Deliberation

##### C. Hung Jury

Insert the following after the bulleted list on page 436:

Effective January 1, 2006, MCR 6.420(C) authorizes the court to accept a unanimous jury verdict on any of the counts charged against a defendant, even though the jury cannot reach a unanimous verdict on all counts. Specifically, MCR 6.420(C) states:

“(C) Several Counts. If a defendant is charged with two or more counts, and the court determines that the jury is deadlocked so that a mistrial must be declared, the court may inquire of the jury whether it has reached a unanimous verdict on any of the counts charged, and, if so, may accept the jury’s verdict on that count or counts.”

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

##### 4.50 Jury Questions

###### B. Questions During Trial

Effective January 1, 2006, MCR 6.414 was amended and a subrule addressing juror questions was added. Insert the following text after the paragraph on page 438:

MCR 6.414(E) formalizes the result reached by the Court in *People v Heard*, discussed above:

“(E) Juror Questions. The court may, in its discretion, permit the jurors to ask questions of witnesses. If the court permits jurors to ask questions, it must employ a procedure that ensures that inappropriate questions are not asked, and that the parties have the opportunity to object to the questions.”

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

##### 4.51 Verdict

###### F. Multiple Charges—Verdict on One or More Counts But Not All

Effective January 1, 2006, MCR 6.420(C) authorizes the court to accept a unanimous jury verdict on any of the counts charged against a defendant, even though the jury cannot reach a unanimous verdict on all counts. On page 441, before Section 4.52, insert the new subsection (F) as indicated above and add the following text:

Where a defendant is charged with multiple counts and the jury reaches a unanimous verdict on any of the counts, the court may accept the jury's verdict with regard to that count or those counts, even if the jury is unable to reach a unanimous verdict on all counts charged against the defendant. Specifically, MCR 6.420(C) states:

“(C) Several Counts. If a defendant is charged with two or more counts, and the court determines that the jury is deadlocked so that a mistrial must be declared, the court may inquire of the jury whether it has reached a unanimous verdict on any of the counts charged, and, if so, may accept the jury's verdict on that count or counts.”

## CHAPTER 4

### Criminal Proceedings

#### Part V—Trials and Post-Trial Proceedings (MCR Subchapter 6.400)

##### 4.53 New Trial

###### A. Generally

Replace the first sentence in the paragraph on page 444 with the following:

“A motion for a new trial may be filed before the filing of a timely claim of appeal.” MCR 6.431(A)(1).<sup>\*</sup> “If the defendant may only appeal by leave or fails to file a timely claim of appeal, a motion for a new trial may be filed within 6 months of entry of the judgment of conviction and sentence.” MCR 6.431(A)(3), as amended.

<sup>\*</sup>As amended,  
effective  
January 1,  
2006.



## CHAPTER 4

### Criminal Proceedings

#### Part VI—Sentencing and Post-Sentencing (MCR Subchapters 6.400 and 6.500)

#### 4.54 Sentencing—Felony

##### E. Resentencing

Insert the following language after the paragraph on page 454:

Either party may file a motion to correct an invalid sentence. MCR 6.429(A).<sup>\*</sup> See MCR 6.429(B)(1)–(4), as amended, for the time requirement for filing such a motion.

<sup>\*</sup>As amended,  
effective  
January 1,  
2006.

##### F. Appeal Rights

Effective January 1, 2006, MCR 6.425(F)(2)(b) and (G)(1)(c) were further amended “to more accurately reflect the holding of the United States Supreme Court in *Halbert v Michigan*[.]” Replace the content of the August 2005 update to page 455 with the following text:

Immediately after imposing sentence on a defendant convicted by plea, the court must advise the defendant that if he or she is financially unable to retain an attorney, the court will appoint an attorney to represent the defendant on appeal. MCR 6.425(F)(2)(b).

When an indigent defendant requests an attorney within 42 days after he or she was sentenced on a conviction by plea, the court must enter an order appointing an attorney. MCR 6.425(G)(1)(c).

Insert the following text before subsection (G) on page 455:

When the performance of a defendant’s appointed or retained counsel prevents the defendant from timely appealing a judgment, MCR 6.428, a new court rule effective January 1, 2006, provides a defendant with an opportunity to remedy the initial untimely appeal. MCR 6.428 states:

“If the defendant did not appeal within the time allowed by MCR 7.204(A)(2) and demonstrates that the attorney or attorneys

retained or appointed to represent the defendant on direct appeal from the judgment either disregarded the defendant's instruction to perfect a timely appeal of right, or otherwise failed to provide effective assistance, and, but for counsel's deficient performance, the defendant would have perfected a timely appeal of right, the trial court shall issue an order restarting the time in which to file an appeal of right."

## CHAPTER 4

### Criminal Proceedings

#### Part VI—Sentencing and Post-Sentencing (MCR Subchapters 6.400 and 6.500)

#### 4.55 Sentencing—Habitual Offender

##### A. Notice Required

Insert the following text after the paragraph at the top of page 457:

The notice of intent to seek enhancement under MCR 6.112(F) must be filed within 21 days after the defendant's arraignment on the information, or if the defendant waives arraignment, within 21 days after the information is filed. MCR 6.112(F).\*

\*As amended,  
effective  
January 1,  
2006.

## APPENDIX

### Checklists, Scripts, Forms

- ♦ FELONY PLEA, Script/Checklist

The amendment to MCR 6.302(B), effective January 1, 2006, affects the content of any writing used to advise a defendant of his or her guilty plea rights. Therefore, on the second page of the felony plea checklist in the appendix, move the following paragraph so that it appears immediately before the information in brackets—[Option to above: If the court is using a written waiver form]:

If I accept your plea, any appeal will be by leave of the Court of Appeals. That means there is no automatic right to appeal. Instead, you would have to ask the Court of Appeals to hear your case and it would be up to them whether they would. Do you understand that?